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REMARKS

The present Preliminary Amendment is in response to telephone conferences between the Examiner and Albert P. Halluin, attorney for applicants, on November 24, and 29, 1993.

Applicants presently amend claim 53, limiting the claim to specific viruses identified in the Specification. See Specification, page 18-21. Applicants note, however, that all of the viruses previously claimed in claim 53 are (+) sense, single stranded RNA viruses and therefore all fall within the scope of the presently claimed invention. See Goldbach, New Aspects Of Positive-Strand RNA Viruses (M. Brinton & F. Heinz, ed.), American Society for Microbiology, Washington, D.C. pp.3-11 (1990).

During Applicants' telephone conferences, the Examiner indicated that an additional statement was needed in order to clarify the inventorship of the instant invention. Specifically, the Examiner is concerned with the fact that individuals are named as inventors who are not also authors of the Donson, et al article. The Examiner previously raised this issue as a rejection of the parent application under 35 U.S.C. § 102(f) (Serial No. 07/739,143), in an Office Action mailed June 15, 1993 (Paper No. 16).

Applicants' undersigned attorney offers the following rebuttal and explanation regarding the difference in authorship of Donson, et al., and the inventorship of the instantly claimed invention.

The Donson, et al. article provides a rather specific disclosure as compared to the present invention. Specifically, Donson, et al teaches DNA constructs pTB2, pTBD4 and pTBN62 and shows that these constructs are able to systemically infect the host plant. Donson, et al also teaches that pTBD4 and pTBN62 are more stable because heterologous subgenomic

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mRNA promoters were used which reduces the rate of deletion by recombination.

The presently pending claims are broader than the disclosure in Donson, et al. For example, Donson, et al. does not teach the broad applicability of the instantly claimed invention to any plus sense, single stranded RNA plant virus that naturally possesses a subgenomic promoter. Donson, et al. also does not teach that systemic transcription is enabled by the use of subgenomic promoters having different, but not necessarily heterologous, nucleic acid sequences. It is thus clear from reading both Donson, et al. and the instant disclosure and claims that the instantly claimed invention is broader than the disclosure in Donson, et al.

The named inventors of the present application who do not also appear as authors of the Donson, et al. article contributed, at least in part, to the conception and reduction to practice of the instant invention. Given the broader scope of the disclosure and claims of the instant application, it follows that there are inventors who do not also appear as authors of the Donson, et al. article.

Applicants' undersigned attorney respectfully submits that the inventorship of the present invention is correct as far as he is currently appraised. Applicants therefore urge the Examiner not to reject the instant invention under 35 U.S.C. § 102(f).

The Examiner indicated during the telephone conference of November 29, 1993 the possibility that submission of a diskette containing the sequence listing was not made in satisfaction of the requirements for applications containing sequence listings. The transmittal letter accompanying a Amendment in Response to a Notice to Comply With Sequence Listing Requirements filed on September 30,

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1993 indicates that a diskette was submitted to the Patent and Trademark Office.

In addition, Applicants earnestly believe that the instant application is in condition for allowance and respectfully request that the Examiner allow the instant application to proceed to issuance.

Respectfully submitted,
LIMBACH & LIMBACH

Dated: November 29, 1993

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